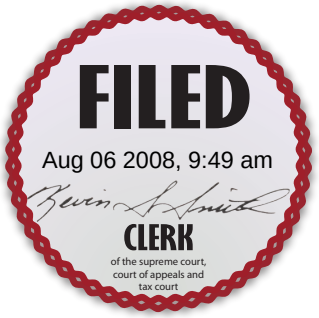

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IN THE
COURT OF APPEALS OF INDIANA

JUSTIN KINNETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0801-CR-12
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
Cause No. 49G16-0710-FD-231130

August 6, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Justin Kinnett appeals his conviction for Battery,[1] a class A misdemeanor, challenging the sufficiency of the evidence. Specifically, Kinnett argues that the conviction must be set aside because the victim "did not produce credible and substantial testimony so as to be sufficient to uphold [this] conviction." Appellant's Br. p. 3. Finding no error, we affirm the judgment of the trial court.

FACTS

Kinnett and Allison Ochs dated "off and on" for nearly three years. Tr. p. 4. On October 29, 2007, Kinnett went to Ochs's Indianapolis residence and accused her of cheating on him with another man. As the two argued, Ochs's cell phone rang. Ochs and Kinnett began to "wrestle around" because Ochs would not permit Kinnett to see who was calling her. Id. The two continued arguing, whereupon Kinnett grabbed Ochs with both hands and squeezed her around the neck. Kinnett then shoved Ochs against a wall, causing her pain.

Kinnett was subsequently arrested and charged with battery and strangulation. At a bench trial that commenced on December 5, 2007, the trial court granted Kinnett's motion for judgment on the evidence on the strangulation count. Kinnett was found guilty of the battery charge, and he now appeals.

DISCUSSION AND DECISION

In reviewing Kinnett's challenge to the sufficiency of the evidence, we initially observe that we will not reweigh the evidence or judge the credibility of the witnesses.

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[1] Ind. Code § 35-42-2-1.

McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and the reasonable inferences supporting the verdict, and we will affirm if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id. Moreover, our Supreme Court has determined that the uncorroborated testimony of one witness, even if it is the victim, is sufficient to sustain a conviction. Ferrell v. State, 565 N.E.2d 1070, 1072-73 (Ind. 1991).

Indiana Code section 35-42-2-1provides that "[a] person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery." The offense is a class A misdemeanor if "it results in bodily injury to any other person." Id. Bodily injury includes any impairment of physical condition, including physical pain. Riffe v. State, 464 N.E.2d 333, 334 (Ind. 1984). Thus, to convict Kinnett of battery as a class A misdemeanor, the State was required to prove that: (1) Kinnett knowingly or intentionally touched Ochs in a rude, insolent, or angry manner; and (2) such contact resulted in bodily injury to Ochs.

In this case, Ochs testified that Kinnett lifted her and threw her against the wall. Tr. p. 8. Moreover, Ochs acknowledged that she was in pain following the incident. Id. at 10. This was sufficient evidence to support Kinnett's conviction for battery, and Kinnett is merely asking us to judge Ochs's credibility, which we cannot do.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.